NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

The Publication Printing Company and Trustees of Graphic Arts Pension Plan and Local 6-505M, Graphic Communications Conference of the International Brotherhood of Teamsters. Cases 14–CA–29046 and 14–CA–29071

February 11, 2008 DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon charges and amended charges filed by Trustees of Graphic Arts Pension Plan (the Trustees) and Local 6-505M, Graphic Communications Conference of the International Brotherhood of Teamsters (the Union), the General Counsel issued a complaint on October 31, 2007, against The Publication Printing Company (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing to make pension fund contributions on behalf of employees and withhold employees' 401(k) plan contributions from their paychecks. The Respondent failed to file an answer.

On December 13, 2007, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on December 19, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that the answer must be received by November 14, 2007, or a motion for default judgment may be filed. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November

19, 2007, advised the Respondent that unless an answer was received by November 26, 2007, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation with a facility in St. Louis, Missouri, has been engaged in the business of printing and binding of periodicals, publications, and books. During the 12-month period ending September 30, 2007, the Respondent, in conducting its business operations described above, purchased and received at its St. Louis, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri.

During the 12-month period ending September 30, 2007, the Respondent, in conducting its business operations described above, sold and shipped from its St. Louis, Missouri facility goods valued in excess of \$50,000 directly to points outside the State of Missouri.

During the 12-month period ending September 30, 2007, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for enterprises within the State of Missouri, all of which are directly engaged in interstate commerce.

During the 12-month period ending September 30, 2007, the Respondent, in conducting its business operations described above, purchased and received at its St. Louis, Missouri facility goods valued in excess of \$50,000 from other enterprises located within the State of Missouri, all of which had received these goods directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

James Burton President/Secretary
Brian Wade Co-owner

The unit of the Respondent's employees, as set forth in the collective-bargaining agreement described below (the

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

unit), is a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

Since about 1950 and at all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 6, 2001, to April 1, 2007.

At all material times since 1950, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about April 1, 2007, the Respondent has ceased making pension fund contributions on behalf of the unit employees.

Since about June 2007, the Respondent has ceased withholding unit employees' contributions to the 401(k) plan from their paychecks.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects of bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or without first bargaining with the Union to a good-faith impasse.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to make pension fund contributions on behalf of the unit employees since April 1, 2007, we shall order the Respondent to make whole its unit employees by making all such delinquent pension fund contributions on behalf of the unit employees that have not been made since April 1, 2007, including any additional amounts due the funds in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7

(1979).² We shall also order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally ceasing to withhold unit employees' contributions to the 401(k) plan from their paychecks, we shall order the Respondent to resume withholding the required employee contributions to the 401(k) plan from employee paychecks and to make any required employee contributions to the 401(k) plan that have not been made since June 2007, including any additional amounts due the plan in accordance with *Merryweather Optical Co.*, supra, and to make the unit employees whole for any loss of interest they may have suffered as a result of the Respondent's failure to make such contributions.³

Further, we shall order the Respondent, on request, to bargain in good faith with the Union regarding pension fund contributions and the withholding of employee contributions to the 401(k) plan.

ORDER

The National Labor Relations Board orders that the Respondent, The Publication Printing Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with Local 6-505M, Graphic Communications Conference of the International Brotherhood of Teamsters (the Union), as the exclusive collective-bargaining representative of the employees in the unit described in the most recent collective-bargaining agreement effective from March 6, 2001, to April 1, 2007, by ceasing to make pension fund contributions on behalf of the unit employees since April 1, 2007, and by ceasing to withhold unit employees' contributions to the 401(k) plan from their paychecks since June 2007.

² To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions to the pension fund and/or 401(k) plan during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the fund.

³ See fn. 2, supra.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the unit described in the most recent collective-bargaining agreement effective from March 6, 2001, to April 1, 2007, with respect to pension fund contributions and withholding of employee contributions to the 401(k) plan until agreement or a good-faith impasse is reached, and reduce to writing and sign any agreement reached as a result of such bargaining.
- (b) Make all the delinquent pension fund contributions on behalf of the unit employees that have not been made since April 1, 2007, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.
- (c) Make the unit employees whole for any expenses ensuing from the Respondent's failure to make the required pension fund contributions, with interest, in the manner set forth in the remedy section of this decision.
- (d) Resume withholding employee contributions to the 401(k) plan from employee paychecks and make any required employee contributions to the 401(k) plan that have not been made since June 2007, including any additional amounts due the plan, in the manner set forth in the remedy section of this decision.
- (e) Make the unit employees whole for any loss of interest they may have suffered as a result of the Respondent's failure to withhold the 401(k) contributions since June 2007, in the manner set forth in the remedy section of this decision.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix." Copies of the notice, on

forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 2007.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 11, 2008

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 6-505M, Graphic Communications Conference of the International Brotherhood of Teamsters (the Union), as the exclusive collective-

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

bargaining representative of the employees in the unit described in our most recent collective-bargaining agreement with the Union effective from March 6, 2001, to April 1, 2007, by ceasing to make pension fund contributions on behalf of the unit employees, or by ceasing to withhold unit employees' contributions to the 401(k) plan from their paychecks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described in our most recent collective-bargaining agreement with the Union effective from March 6, 2001, to April 1, 2007, with respect to pension fund contributions and withholding of employee contributions to the 401(k) plan until agreement or a good-faith impasse is reached, and WE WILL reduce to writing and

sign any agreement reached as a result of such bargaining.

WE WILL make all the delinquent pension fund contributions on behalf of the unit employees that have not been made since April 1, 2007, including any additional amounts due the funds.

WE WILL make the unit employees whole for any expenses ensuing from our failure to make the required pension fund contributions, with interest.

WE WILL resume withholding employee contributions to the 401(k) plan from employee paychecks and WE WILL make any required employee contributions to the 401(k) plan that have not been made since June 2007, including any additional amounts due the plan.

WE WILL make the unit employees whole for any loss of interest they may have suffered as a result of our failure to withhold the 401(k) contributions since June 2007.

THE PUBLICATION PRINTING COMPANY